

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**M.F, a minor, by and through his father,
MICHAEL FISHER, and his mother,
KATHERINE FISHER,**

Plaintiff,

vs.

**CARROLL INDEPENDENT SCHOOL
DISTRICT, WHITNEY WHEELER, in
her individual capacity as Principal of
Durham Intermediate School, and KIM
RAY, in her individual capacity and
capacity as Assistant Principal and
Campus Behavior Coordinator of
Durham Intermediate School,**

Defendants.

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CIVIL ACTION NO. 4:23-cv-01102-O

AFFIDAVIT OF WHITNEY WHEELER

Before me, the undersigned authority, personally appeared Whitney Wheeler, who, being by me duly sworn, deposed as follows:

“My name is Whitney Wheeler, I am of sound mind, over 21 years of age, capable of making this affidavit, and personally acquainted with the facts herein stated:

1. On Friday, October 27, 2023, a DAEP placement hearing was held for M.F. at Durham Intermediate School at 12:30 p.m. Present were me, Assistant Principal Kim Ray, SRO Wormley, Counsel for the District, Katie Pestcoe, M.F., his mother, Katherine Fisher, his father Michael Fisher, his grandfather, Michael Fisher, and their attorney, Griffin Rubin. During the course of this hearing, the District presented the evidence we had obtained in investigating a bullying/cyberbullying incident that was the subject of this disciplinary hearing. Then M.F. was provided with the opportunity to present his case. During his presentation, M.F. was presented with two screenshots of posts on a fake TikTok account that included images of two other students, Minor #1 and Minor #2, with writing over top

of the images. M.F. admitted to creating the image, writing the statements, making the post of Minor #1, and making a post about himself. Additionally, he admitted that while he did not create the image or write the statements related to Minor #2, he was present when they were created, and they were posted from the same account on his personal phone. It was confirmed at this hearing that these posts were made from this TikTok account on Friday, October 20, 2023, in the after-school evening hours.

2. The campus was not made aware of the falsely created TikTok account, nor any issues or incidents relating to the posts, until Monday, October 23, 2023. During our campus leadership meeting on Monday, October 23, 2023, Ms. Ray, Assistant Principal, Ms. Weinlein, Counselor, and myself as the Principal, were discussing the week ahead when Ms. Weinlein shared that she had received an email from the mother of Minor #1 asking if the campus was aware of the Durham LaLaBop TikTok account. At that time, neither Ms. Ray, Ms. Weinlein, nor myself knew about the LaLaBop trend as we do not have TikTok accounts.
3. In the email to Ms. Weinlein and myself, the mother of Minor #1 shared the post about her son with us. Our Admin team reviewed the picture, but at that time, agreed that it would be best for the counselor to reach out to the mother to see if the student needed extra support. As a team, we also discussed the fact that the post was made over the weekend, and hoped it was on a personal device.
4. Post #1 was a picture of Minor #1 with the statement, '[Minor #1] sucks at sports and is so ugly. He meatrides [student] and nobody likes him he is super dumb and as smart as [student] which isnt saying much. His ugly side oart looks terrible and idk how he pulled [student] but seeing as how [student] looks im not surprised she said yes'. A true and correct copy of Post #1 is attached as Exhibit #1 to this Affidavit. Exhibit #1 has been redacted to protect identifiable student information as required by FERPA.
5. Prior to receiving an email from the mother of Minor #2, students started to approach our Admin team in the halls and in the cafeteria to ask if we knew about the posts/trend/hurtful comments. In listening, we heard students making fun of Minor #2 for being fat and discussing a dating relationship/rejection of Minor #1. While speaking with students and inquiring about how they knew about the TikTok posts regarding Minor #1 and Minor #2, we were alerted to a text group (Durham PPL) that at times included up to 70 students. It was then we learned that the TikTok posts were being screenshotted and shared within the group text.
6. Post #2 was a picture of Minor #2 with the statement, '[Minor #2] is a very fat girl and struggles to hold her self back from the buffet table and she likes [student] and the only

person she has managed to pull is [student] she is so bad at volleyball but it makes sense because shes so fat she cant move around [Minor #2] is as chubby as a bean bag she talks crap about everyone and she said [student] is a stupid curry muncher who makes out with her fake bf [Minor #2] is the roumor queen.' A true and correct copy of Post #2 is attached as Exhibit #2 to this Affidavit. Exhibit #2 has been redacted to protect identifiable student information as required by FERPA.

7. The 6th grade section of our campus was 'a buzz' about the TikTok posts, and our Admin team was informed that students were upset about the posts, and that finger pointing was taking place. We also learned that students were openly sharing projections of who could/could not have made the posts based on who they knew had social media; specifically, TikTok accounts. In speaking with a student who was adding commotion to the hallways regarding the online posts, he shared that he felt an innocent student had his picture used as the TikTok account holder, and that he did not believe that student was involved. At that time, the student attempted to show me the TikTok account, but everything was either blocked or deleted. Not knowing about the trend, Ms. Ray and I researched 'LaLaBop'. After reviewing the images from both parent emails, listening to students, and realizing this situation was creating a substantial disruption to the school day, our Admin team met and determined that we needed to check into the original TikTok posts. Due to time constraints, I was only able to speak with one student and check on Minor #2 before it was the end of the school day.
8. On Tuesday, October 24, 2023, near the end of the C lunch period, the District SRO, Officer Wormley, approached Ms. Ray in the hallway and said that he needed her to follow him to his office. According to Ms. Ray, Officer Wormley shared with her that he had two boys in his office that admitted to making the TikTok posts. When Ms. Ray walked into the SRO's office, M.F. and [Minor #3] were sitting in the chairs near Wormley's desk. Ms. Ray said, 'hey guys, what's going on?' The boys said, 'we told Officer Wormley that we made the TikTok posts.' Ms. Ray then walked both boys to the main office suite, and following district practices had both students write their statements. A true and correct copy of M.F.'s statement is attached hereto as Exhibit #3. Exhibit #3 has been redacted to protect identifiable student information as required by FERPA.
9. While M.F. was in Ms. Ray's office, Ms. Ray spoke with him about how his words could be hurtful to others, and how it was important to be truthful. Ms. Ray then began to ask clarifying questions while reading his statement. At one point, I entered the office and later inquired as to how a post was created about him. M.F. said that he created one (LaLaBop) about himself, but that he took down the post quickly thereafter. M.F. also shared that Minor #3 made a post about himself, too. I asked M.F. if he felt that what he wrote about himself was true or if he was being sneaky about who was posting. M.F. just looked at me.

In his written and verbal statement, M.F. confirmed that he used his personal device to make the TikTok posts prior to me leaving the office.

10. CISD personnel did not conduct/lead the initial investigation. Instead, student interviews were unknowingly conducted by Officer Wormley, campus SRO with Southlake Police Department. The District later found out that this police investigation was conducted as a part of a separate felony complaint filed with the local police department that also related to the TikTok posts. Throughout the course of his investigation, Officer Wormley determined that M.F. and Minor #3 created the posts. At the conclusion of his investigation, general information highlighting his findings was later shared with Kim Ray, Assistant Principal. I was not aware that Officer Wormley was investigating the TikTok posts until Ms. Ray came to speak with me regarding Officer Wormley's involvement. It was then that I also learned that Officer Wormley had been pulling students and gathering information regarding the online posts while acting on authority from his supervisor at the Southlake Police Department.
11. Officer Wormley shared that a Durham Intermediate parent, had been to the Southlake Police station attempting to file a report regarding the fraudulent use of his son's picture on the fake TikTok account. It was then that Officer Wormley informed Ms. Ray and me that he was asked by his supervisor (Sargent D'Amico) to investigate this claim and to write an official report for the Southlake Police Department to use as a part of their investigation into the matter.
12. Officer Wormely shared that he interviewed 20-25 students throughout the school day on Tuesday, October 24, 2023. Moreover, those specific students were pulled from instructional learning to provide information regarding their knowledge of the created TikTok account/posts. With students missing instructional minutes, learning was impacted. While students were consistently being pulled from classes, teachers had to manage the constant disruption of answering the phone for the requested student(s). Additionally, teachers were tasked with reteaching lessons to ensure students learned the material missed while meeting with Officer Wormely.
13. Teachers struggled to effectively educate and control classrooms/hallways due to the disruptive nature of students being physically and emotionally affected by and distracted by these TikTok posts. In addition, while Officer Wormley was interviewing students, he was not completing his needed tasks to ensure the safety of our campus. Specifically, the investigation took him away from completing required door safety checks, monitoring lunch/recess, and being a steady presence on campus.

14. Later in the afternoon of Tuesday, October 24, 2023, the Admin team alongside Officer Wormley met with the mother and father of Minor #1 and the father of Minor #2 at their request. During the meeting, Minor #1's mother shared her personal investigation notes with the team. She, too, had come to the conclusion regarding who she felt had most likely made the posts (incorrectly including an additional possible student). The mother of Minor #1 then shared documentation which included additional text messages, social media posts, etc. for the campus team to review/consider. During the parent conference, the mother of Minor #1 requested a bullying and sexual harassment investigation be completed due to the use of the sexual term 'meatrides' in the public post about her son. Our team shared that we could launch both investigations; however, after reviewing the definitions of both terms from the CISD website, it was discussed that the information provided was more aligned with a bullying investigation than a Title IX or sexual harassment investigation. The mother and father of Minor #1 and the father of Minor #2 then shared that they would like a formal bullying investigation conducted by the school prior to them making further decisions, i.e., contacting and potentially filing a report with the Southlake Police Department. Following District protocol, for bullying investigations and evaluating off-campus speech that causes a substantial disruption to the educational environment, we shared that we would launch an official bullying investigation. Lastly, I shared that we would email our official 3-day notice letters within the mandated time frame. Parents were satisfied with this plan of action as evidenced by follow up emails.
15. While meeting with the Mother of Minor #1, she shared screenshots which included a particularly disturbing statement. A student wrote, 'i hope you know im 5 seconds away from stabbing myself because of you.' Then, messages about the student wanting to cause self-harm were shared in the 'Durham PPL' chat as students were discussing the TikTok posts and ongoing investigation. Understandably, this information was upsetting, and immediately set the campus Crisis Team into action. This student was pulled from instruction to meet with me, and we discussed the post. The student shared that although he did not intend to harm himself, he made the comment to get the other students to leave him alone. The student then spoke with the campus counselor and the parent was contacted. Since the well-being of our students is our top priority, we intentionally took time to connect with this student.
16. While continuing to address student concerns, there were 3 students who were not directly involved in creating/publishing the TikTok posts, but shared they felt negative pressure from their peers on Monday (10/23) and Tuesday (10/24) as they were being blamed for the shameful comments. One student shared that the DIS LaLaBop account holder messaged others (and it was shared in the text group), that the owner of the account had a name that started with a 'Hu'. Students immediately began blaming a student with 'Hu' in his name resulting in him being scared that he would be in trouble, and apprehensive

waiting to be called down by Officer Wormley. Furthermore, this student shared that 'I cannot believe M.F. blamed me because we played football together. I don't want to be friends with him anymore because it was so mean.' Again, this student shared that he was bothered that he was being blamed. Another student being rumored to have been involved shared that 'someone said it was me and it wasn't.' He went on to share that he was pulled from instruction twice by Officer Wormley and questioned about the ownership of the TikTok account. The student shared that he was upset and felt like he was being 'blamed by everyone' He also said, 'I went to school, and everyone was talking about it and was blaming me.'

17. Additionally, this student admitted that he did not focus on learning the remainder of the day as he was scared to return to Officer Wormley's office. Lastly, the parents of a student who had his image falsely used, garnered substantial time from district personnel. Specifically, I spoke with this student's mother and father at separate times regarding the incident and listened to their disgust for the hatefulness and misuse of their son's identity. Additionally, the father spoke with and emailed district administrators multiple times expressing his concerns about the implications of using his son's image and its impact on his son's and their families reputation. Furthermore, this parent went to the Southlake Police Department and spoke with an officer about filing a criminal charge against the perpetrator(s). Lastly, the father of this student has spoken with Officer Wormley on multiple occasions regarding his continued concerns and desire for a complete police report. Again, all of these conversations distracted all parties from their needed work as a result of the LaLaBop account being created and posting inappropriate, racist, and demeaning comments about minors.
18. Taking into consideration the heightened excitement from all 6th grade students regarding the TikTok posts, both students and teachers shared that the focus at school on both Monday (10/23) and Tuesday (10/24) was not on learning, but instead on discussing the posts, their negative impact on the victims, students theorizing who might have written the posts, and the desire for the student(s) who made the posts to take ownership of their actions.
19. As a campus, we immediately began to receive communication from Durham parents as well as CISD community members concerning their perspective regarding the actions of M.F. and Minor #3 and their desired discipline/expulsion outcomes.
20. One parent wrote the following statement regarding M.F. and Minor #3 and their actions: 'The heinous, mean spirited, vile, mischievous rumors and falsehoods are destructive to our students. this is not isolated to this TikTok platform. When screenshots of the TikTok posts and conversations regarding them make their way into the student group text, these

same individuals continued to communicate destructive harmful comments on this group text with fellow Durham students. It is past time for their actions to have serious consequences. I believe in second chances however, the perpetrators of this abusive conduct have a long history of maliciousness.'

21. Another parent wrote: 'How can we ensure that ACTUAL disciplinary measures beyond ANOTHER suspension will be taken? Also, the kids all know about this and so many stories are being circulated. Will this be addressed? How are you going to protect my child?' Another parent wrote: 'There are so many horrible, well-thought out, planned, premeditated statements in this that the father of this child took to social media to call out the aggressor and within minutes, our small town figured out Minor #3 created a fake TikTok account to ruin innocent children at school. Do you know more women and girls die from eating disorders than breast cancer in the US? Ironically, before any of you worked in Carroll, a counselor at DIS, died of an eating disorder years ago. It is astonishing a boy can fat shame, humiliate, and aggrieve a fellow student in 2023 and all he gets is a three-day slap of no school. You've no idea how this can affect this young girls now and beyond and to be targeted by a peer and splashed all over social media. How can any of you confidently look this child in the eye where she has to be in the same building as someone who would maliciously target her self-worth, her body, her personhood?...A similar situation occurred with a boy and girl on social media last winter and the boy was swiftly kicked out and off to a local private school. What kind of message are you sending when this tormentor keeps getting a free pass? Why have a code of conduct? Are you aware these posts are going round the Indian community's Whatsapp group? What do you say to them as he discriminates and has racist language to their community--even calling one girl by name? What if the Mike Fictionbaugh's of the world get a hold of these like the 2018 deal and yall sit on your hands afraid to actually enforce the code of conduct? You have an ineffective leader at the helm of that school and this student is blazen in his disregard for authority, respect for others and safety of others. I can't wait for my son to be off this campus. My older three boys have had a slew of different teachers and admin on that campus. Multiple children are tormented and abused by [Minor #3] and your silence speaks volumes--it perpetuates our bad reputation because you aren't actually doing anything to protect innocent children. If one child creates this much abuse towards others, it is your actual job to protect the majority of the student body, the victims from his latest crime. Your salaries are paid by us--the taxpayer. We send our most precious children to school each day, under your care and supervision--hence you make more than the average teacher--you must be willing to make hard decisions including this one: expelling a perpetual bully harasser/tormentor. Most positions in CISD post 2021 looks different. Anyone is replaceable. The leaders who remain the same are competent. There are many campuses and admin positions that look different and I can say unequivocally that DIS needs new leadership if Minor #3 is allowed to remain on campus.'

22. Another parent wrote, 'his behavior has damaged the juvenile psyche of so many children. One student whose family we know was so emotionally distraught by Minor #3 that their entire family left CISD. That alone is tragic. While CISD cannot do anything about the manner in which Minor #3 parents handle their child, they should be able to do everything about the torment he causes on CISD campuses to CISD students, teachers and administration...This must end now, he must be expelled and not allowed to return to CISD. Do not be intimidated by legal action by their family, remove him from the district immediately. Too many Dragon families are closely watching this situation for CISD to mess this up.'
23. Lastly and most heartbreaking, a parent wrote, 'Wheeler, you are a disgrace to the entire teaching profession and here is why. YOU are in charge of 800 5th and 6th graders, each with their own set of eyes, heart and mind...It is akin to Hamas getting lauded and rewarded for taking Israeli hostages. You DO NOT reward the abuser!! You cancel his behavior and set the standard that this sexual, body-shaming, misogynistic, racist, and direct targets towards specific students will, under no circumstances, be tolerated on your watch or we, the parents of said precious children, will raise enough hell to cancel you to find someone who can protect our precious children.' These comments are questioning not only my ability to successfully lead a campus, but my true love for my campus and the students within the four walls. These words have shaken me to the core but should be directed at the parents of M.F. who put our students, the Durham community, our staff, and myself in this position.
24. Additionally, the actions of M.F. and Minor #3 began trending on Facebook. Specifically, two big posts have garnered great attention from our community resulting in disparaging comments about both the campus and district administration. Sadly, many comments are not factual resulting in tarnished reputations. Personally, I have been yelled at and spoken to very harshly regarding the incident. Parents are furious that the boys are not being expelled and are being provided an opportunity to return to Durham as they will again have the ability to victimize students and staff.
25. In addition to carpool line comments, emails, and social media posts, countless parents have also called the campus and shared their concerns regarding the egregious posts thus taking time away from secretarial and administration staff. Returning these phone calls has not only resulted in time away from students and staff but taken away from my family as I have remained on campus past 9:00pm each night for the past week attempting to do damage control. Additionally, as a result of the countless phone calls, desired parent meetings, and emails, district personnel worked together to create an email which was sent

to all Durham families regarding the investigation and the significant and substantial impact on the campus learning operation and daily operations.

26. In dealing with this situation, Ms. Ray and I have had to cancel meetings, neglect our other students and teachers' needs, and been challenged to provide appropriate supervision per our daily duties as we are responding to public outcry. Due to the conflict and unrest in our community we are unable to reasonably keep up with emails and phone calls that are being received by community members who want to weigh in on the situation, much less the typical emails, phone calls and communication needed to effectively run a school building. Lastly, I canceled 3 previously scheduled parent meetings, 2 teacher observations, and had to alter my assigned duties to sit at the courthouse on Monday, October 30, 2023. While there, I was not able to use my technology or work on tasks as we waited for M.F.'s lawyer to arrive as stated in communication with my counsel thus causing further disruption to the daily operations of Durham Intermediate.
27. To complicate matters, immediate relatives of M.F. and Minor #3 are both substitute teachers for Carroll ISD. At this time, the parents of 8 different students have formally requested that neither individual substitute in their children's classrooms. Alarmed parents have shared that they are concerned for the well-being of their children while in these two individuals' care during the school day. They also have questioned the ability of them to maintain a safe and nurturing environment at school after filing a lawsuit against myself and Ms. Ray, which further speaks to their lack of character and integrity as perceived and shared by multiple stakeholders as described by a parent most recently.
28. Furthermore, I have been publicly humiliated, berated and slandered on social media and in conversations throughout the community. I have also been accused of favoring these families and showing leniency regarding their children's punishment. Parents are appalled and horrified that the family of M.F. is choosing to file a lawsuit against me instead of owning the actions of their son. In fact, multiple parents have offered to support my legal needs with expertise and finances, to which these offers were declined. In dealing with this situation, I have missed a family birthday celebration, was unable to attend a memorial service without constant interruptions, have had to reschedule weekend vacation plans, have lost countless hours of sleep, and missed an appointment due to the stress/time commitment of dealing with this issue. The mistruths within this lawsuit and the constant bullying from the community have taken a toll on my mental health and overall well-being. It is unbelievable to me that I have been pulled into this situation when the student clearly admitted to his actions.
29. As a part of the investigation, Ms. Ray and I called and consulted with Mr. Nickel, CISD Student Services, regarding the LaLaBop posts. During that phone call, Ms. Ray and I

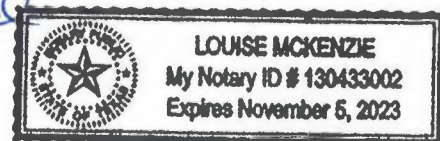
shared M.F. and Minor #3's statements and evidence/information gathered regarding the TikTok posts and the student group text chat. At that time, Mr. Nickel shared that in listening to the information gathered, the burden of proof/the definition of bullying/violation of David's Law had been met and we were authorized—and required—to enact appropriate discipline. Additionally, since we were aware of this entire issue began with off-campus speech, determined there was a clear and substantial disruption to the educational environment and reviewed relevant laws, policies, and legal precedent prior to taking action.

30. After thoroughly reviewing the written statements made by M.F. and Minor #3, as well as the documentation provided by the mother of Minor #1, both M.F. and Minor #3 were placed on out-of-school suspension while our Admin team met to discuss next steps. We discussed the intent or lack of intent at the time M.F. engaged in the conduct, the severity and effect of the conduct, and his discipline history. We also noted that there is not a documented disability that substantially impairs M.F.'s capacity to appreciate the wrongfulness of his conduct. Lastly, we reviewed the definition of bullying and cyberbullying per CISD Code of Conduct, FFI (Legal), FFI (Local), and the Texas Education Code section 37.0832. It was then concluded that M.F.'s actions met the definition of bullying and cyberbullying, and that the discipline issued should appropriately address the significant and substantial disruption to the orderly operation of our classrooms, school environment, and negative impact on the social-emotional well-being of other students.
31. Forty-five days is the minimum time for a DAEP placement of this nature, so the District gave M.F. a 45-day placement with the opportunity to review early. The placement decision of 45 school days with the opportunity for review at 33 school days was allowable considering the extent of M.F.'s actions which grossly impacted the entire campus at many levels to include the detrimental effects on the individual victimized students. By offering a review at 33 school days, this would allow M.F. to successfully complete the current grading period without interruptions or additional transitions which would affect his learning. Furthermore, it would lead to a transition back to Durham at a natural break in the school calendar while also affording M.F. the opportunity to return with a fresh start in the new calendar year.

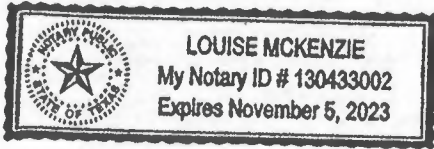
FURTHER AFFIANT SAYETH NOT.

Whitney Wheeler
Affiant, Whitney Wheeler

[Handwritten signature]



SWORN TO AND SUBSCRIBED before me on the 2nd day of November 2023.





Notary Public, State of Texas

My commission expires:

11/5/2023